



January 4, 2001

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2001-0025

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 142904.

The El Paso Police Department (the “department”) received a request for information relating to investigations of El Paso Community College. You state that the initial request was for “the ‘results, conclusions, and case summaries’ of the various investigations.” The requestor subsequently informed you that he wants copies of all of the responsive police reports. You have submitted information relating to three investigations that you deem to be responsive to the request. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.¹

Initially, we must address the department’s failure to comply with section 552.301 of the Government Code. Section 552.301 prescribes the procedures that a governmental body must follow in asking for an attorney general decision as to whether requested information is excepted from disclosure. Section 552.301(e) provides that the governmental body must submit to this office, “not later than the 15th business day after the date of receiving the written request . . . a copy of the written request for information[.]” Gov’t Code § 552.301(e)(1)(B). Section 552.302 provides as follows:

¹This letter ruling assumes that the representative samples of information that you submitted are truly representative of the responsive information as a whole. This letter ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. See Gov’t Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

If a governmental body does not request an attorney general decision as provided by Section 552.301 and provide the requestor with the information required by Section 552.301(d), the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.

Gov't Code § 552.302. In this instance, and although you recite timely submission of a request for information received on October 12, 2000, the materials that you submitted do not include a copy of that request. Your statutory deadline for submitting a copy of the request for information has expired. Thus, as the department failed to comply with section 552.301 in asking for this decision, section 552.302 requires the release of the information requested in writing, unless there is a compelling reason to withhold any of that information from the public. Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 380-81 (Tex. App.--Austin 1990, no writ).

As section 552.108 is a permissive exception to disclosure that a governmental body may waive, the department's claim under section 552.108 does not present a compelling reason sufficient to overcome the statutory presumption that the requested information must be released. *See Open Records Decision Nos. 177 (1977), 586 (1991)*. Generally, however, the operation of section 552.302 can be overcome by a demonstration that certain information is confidential by statute or that it implicates the privacy interests of a third party. *See Open Records Decision Nos. 630 at 3 (1994), 325 (1982)*.

You raise section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 protects information that is encompassed by the common law right to privacy. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld under section 552.101 in conjunction with common law privacy when (1) it is highly intimate and embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) there is no legitimate public interest in its disclosure. *Id.* at 685. The matters considered to be intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimacy, psychiatric treatment, attempted suicide, and injuries to reproductive organs. *Id.* at 683; *see also Open Records Decision No. 659 at 5 (1999)*. Upon careful review of the information that you claim is confidential under section 552.101 in conjunction with common law privacy, we conclude that the information in question is not excepted from disclosure. *See Open Records Decision Nos. 473 at 3 (1987) (noting legitimate public interest in job performance of public employees), 423 at 2 (1984) (noting greater public interest in disclosure of information regarding public employees)*.

You also raise section 552.101 in conjunction with the common law informer's privilege. The informer's privilege has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-

enforcement authority, provided that the subject of the information does not already know the informer's identity. *See* Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). It also protects the identities of individuals who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). However, as its purpose is to protect the flow of information to the governmental body, rather than the person who furnishes the information, the informer's privilege, unlike other claims under section 552.101 of the Government Code, can be waived. *See* Open Records Decision Nos. 630 at 4 (1994), 549 at 6 (1990). Thus, in this instance, your claim under section 552.101 in conjunction with the informer's privilege was waived by the department's failure to comply with section 552.301.

A social security number may be confidential under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if the social security number was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that any social security number in the submitted records is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, nor are we aware of any law enacted on or after October 1, 1990, that authorizes the department to obtain or maintain a social security number. Therefore, we have no basis for concluding that any social security number contained in the submitted records was obtained or is maintained pursuant to such a statute and is therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Therefore, prior to releasing any social security number, you should ensure that the social security number neither was obtained nor is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

Lastly, we address your claim under section 552.130 of the Government Code, which governs the disclosure of motor vehicle record information. Section 552.130 provides in relevant part:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

(2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). The department must withhold motor vehicle record information, including Texas driver's license and license plate numbers, in accordance with section 552.130.

In summary, the department may not withhold any of the requested information under section 552.108 of the Government Code, as the department waived its claims under section 552.108 in failing to comply with section 552.301. Furthermore, the department may not withhold any of the requested information under section 552.101 in conjunction with common law privacy or the informer's privilege. A social security number may be confidential under section 552.101 in conjunction with federal law. Motor vehicle record information must be withheld in accordance with section 552.130. The rest of the requested information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

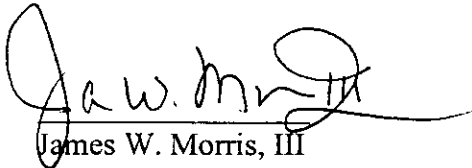
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 142904

Encl: Submitted documents

cc: Mr. Matt Babick
P.O. Box 9776
El Paso, Texas 79995
(w/o enclosures)